IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.03.2007

CORAM:

THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. No.31169 of 2004

Ganga Nair Matriculation School
represented by its Correspondent
K.G. Sobeyan
Neelambur
Paladam Taluk
Coimbatore District ... Petitioner

vs.

1 The Secretary to Government
School Education Department
Fort St. George
Secretariat, Chennai-600 009

2 The Director
Tamil Nadu Matriculation Schools
College Road, Chennai-600 006

3 The Inspector of Matriculation Schools
Coimbatore District ... Respondents

Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus as stated therein.

For petitioner — Mr. AR.L. Sundaresan, Sr. Counsel for Mr. R. Shivakumar

For respondents — Mr. V. Viswanathan, Additional Govt. Pleader (Edn.)

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O R D E R

The petitioner school has filed this writ petition seeking to call for the records relating to the order of the second respondent vide his proceedings O.Mu.No.6653/E2/2004 dated 30.09.2004 and to quash the same and to consequently direct the second respondent to grant recognition to the petitioner school as requested by them in letter dated 20.03.2004.

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2. The case of the petitioner, in brief, is as under:

The petitioner school which is run by Ganga Nair Social Welfare Trust, obtained provisional permission from the Director of School Education, Chennai vide his proceedings dated 19.09.2000 for conducting classes for standards I to VI and started functioning with a strength of 80 odd students. The property in which the school is situated has been leased out by one Sivananda Paramahamsar Madayala Trust to an extent of 37 cents and also by the Trust which runs the school to an extent of 2.33 acres. The petitioner school has made a cash endowment of Rs.1,20,000/- for standards I to VI. It is satisfactorily equipped with six teachers, drinking water and sanitary facilities and the construction of school building is sound and all these are supported by certificates from concerned authorities. The petitioner school applied for renewal of recognition vide letter dated 20.03.2004 to the third respondent. While so, it received an order dated 30.09.2004 from the second respondent withdrawing the recognition granted to it, some of the grounds being:

a. the provisional permission has expired since temporary recognition is not obtained within a period of three months from obtaining provisional permission

b. the school is not situated in a 3-acre area

c. the playground is not situated within the same complex and is situated 500 metres away from the school and

d. RCC roofing is not available even when four years have lapsed since inception of the school.

3. It is the case of the petitioner that the school is situated very near to the Corporation limits of the Coimbatore District and the playground is not situated 500 metres away from the school as mentioned in the impugned order and the distance between the school and the playground is only 500 ft. and both the school and the playground are being used by the students of the school.

4. According to the second respondent who has filed counter, the petitioner school ought to have applied for temporary recognition within three months from the date of getting provisional permission whereas it has taken more than four years and that too without complying with certain conditions imposed in the order of the

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Director of School Education granting provisional permission and on this ground itself, the recognition granted has to be withdrawn. It is further stated in the counter affidavit that the third respondent inspected the petitioner school on 20.05.2004 to verify whether the conditions stipulated in the order of the Director of School Education granting provisional permission, have been complied with by the petitioner school and since the same were not fulfilled, the order under challenge has been issued rejecting the proposal for temporary recognition.

5. Mr. AR.L. Sundaresan, learned Senior Counsel appearing for the petitioner school has contended that the school play ground is situated only 500 ft. away from the school and not 500 metres as mentioned in the impugned order and the fact that the playground is 500 ft. away from the school does not matter as according to **Section 25 of Chapter IX of Code of Regulations for Matriculation Schools in Tamil Nadu** (in short **"the Code"**) the proximity of the playground to the school premises is not relevant and so long as the school and playground are used by the students, the second respondent is not correct in rejecting the proposal for temporary recognition on that ground. He has further contended when a Chartered Civil Engineer has certified the structural soundness and the availability of classrooms, library, laboratory and toilets in the school building, the second respondent cannot withdraw the recognition saying that RCC roofing and adequate laboratory and library facilities are not available.

6. The learned Senior Counsel for the petitioner, while attacking the impugned order which states that the student strength has not improved over the last four years, has replied that once permanent recognition is obtained upto VIII standard, the student strength would automatically improve. It is also his contention that according to Section 26 of Chapter X of the Code, the second respondent ought to have given one year notice for closure of the school as sudden withdrawal of recognition would severely hamper the education of the students.

7. Per contra, the first and foremost contention put forward by Mr.Viswanathan, learned Additional Government Pleader is that when the petitioner has failed to comply with the conditions imposed by the Director of School Education in his order dated 19.09.2000 granting provisional permission, that too, after a lapse of four years from the date of inception, the recognition is liable to be withdrawn and hence, the second respondent is correct in proceeding with the issuance of the impugned order.

8. Mr. Viswanathan has further contended that as per the report of the Inspector of Matriculation Schools, the third respondent herein, and also the photos provided by him, it is clear that the school building does not contain RCC roofing as prescribed

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and it contains only Mangalore tiled temporary structures and since the petitioner school has not fulfilled even this minimum requirement, temporary recognition can be granted in no way.

9. With regard to the contention of the learned Senior Counsel for the petitioner that one year notice has to be given for withdrawal of recognition, Mr. Viswanathan has submitted that there is no such provision to that effect in Section 26 of Chapter X of the Code.

10. I have heard the learned counsel on either side.

11. What is to be decided in this writ petition is whether the second respondent is justified in withdrawing the recognition granted to the petitioner in view of the reasons specified in the impugned order. Of all the defects based on which recognition has been withdrawn, the major defect pointed out by the second respondent is that the petitioner school is not located in a 3 acre area as mandated.

12. Before proceeding to decide the case, it would be relevant and useful to refer to **Section 25 of Chapter IX of the Code** which reads as under:

> **"Use of school building:**
>
> The premises of an educational institution or any subsidiary building apportioning to it or a playground or vacant site belonging to a Matriculation school, whether **adjacent or remote** from it, shall ordinarily be used only for the purposes of functions conducted by such institution. In no case shall the use of such buildings, play ground or vacant site be given for political meetings. The schools will make available their halls for the conduct of examinations, if required."

13. From a reading of the above Section, it is seen the fact that the playground is 500 ft. away from the school premises cannot be a ground for rejection of temporary recognition, the reason being, it is only mandated that the playground should be used only for school purposes and nowhere it is stated that the playground should not be far away. In fact, it is specifically stated that it may be adjacent or remote.

14. Next, it would also be relevant to refer to **Section 26 of Chapter X of the Code** which reads as under:

"An educational agency shall close a school or

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> a standard of a course of instruction therein, only after giving notice, in writing one year prior to such closure to the competent authority who had given permission to open school, the standard or the course of instruction. Such notice shall set out the alternate arrangements proposed to be made for the continuance of instruction to the pupils of the school or standard or course of instruction. Such closure however shall be permitted only with effect from the end of the school year. The competent authority while giving such permission shall satisfy himself about the adequacy of the alternate arrangements proposed to be made and that any property endowed to the school proposed to be closed shall continue to be used for educational purposes in accordance with the objects of the Trust or Endowment."

15. A glance of the above provision makes it clear that it is only the school which has to give one year prior notice to the competent authority who had given permission to open school and it is not the respondent who is supposed to give one year notice to the petitioner school, as contended by the learned Senior Counsel for the petitioner school. Hence, the contention raised by the learned Senior Counsel that the respondent cannot withdraw the recognition without giving one year prior notice does not have legs to stand.

16. Admittedly, based on Dr. S.V. Chittibabu Committee Report, the Government of Tamil Nadu has issued G.O. (2D) No.46 dated 21.07.2004 on the subject of functioning of Matriculation Schools and Matriculation Higher Secondary Schools in Tamil Nadu wherein it is stated that a school in a rural area should have an extent of 3 acres. Whereas, in the case on hand, the petitioner school runs short of this requirement by 30 cents. It is also not in dispute that the petitioner school has to comply with certain conditions imposed by the Director of School Education in his order granting provisional permission. Though the learned Senior Counsel appearing for the petitioner has contended that the petitioner school is located at a distance of less than 1 km. from the Coimbatore Corporation limit, he has submitted that the petitioner school has undertaken to acquire the area of shortage and also to comply with all the requirements, as stipulated by the Director of School Education in his order granting provisional permission, provided a reasonable time is given for compliance of the same.

17. As for the requirement of RCC roofing is concerned, as pointed out by the second respondent as defect no.4 in the impugned order, the Senior Counsel for the petitioner has referred to the **Inquiry Commission Report of Justice Thiru. K. Sampath** in which

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Clause 6.1.1.1.1.3 – Type of construction reads as under:

> "a. The school buildings shall be completed in a more stable manner and buildings should be strongly founded on hard strata. Framed structures shall be preferred.
>
> b. The school buildings shall preferably be of "A"
>
> *Where it is not possible to provide RCC roofing, the roofing*
>
> c. should be in conformity with the PWD norms. "Solar reflective coating" as recommended by NITT, Trichy may also be thought of.
>
> d. only non-combustible fire proof heat resistant materials shall be used for the construction of school buildings. In the case of Mangalore Tiled Roofing/ AC Sheet Roofing, the under-structure supporting the roof shall be with non-combustible materials or with materials of high fire resistance rating."

18. On the strength of clauses (c) and (d) referred to above, learned Senior Counsel appearing for the petitioner has contended that temporary recognition cannot be rejected on the ground that RCC roofing is not available. Of course, this contention of his does have some force because the petitioner school contains Mangalore tiled roofing which is also permissible as per the Inquiry Commission Report of Justice K. Sampath and what is to be looked into by the third respondent is whether the under-structure supporting the roof is with non-combustible materials or with materials of high fire resistance rating.

19. Next, the defect no.5 of the impugned order which states that the playground is 500 metres away from the school is factually incorrect as according to the petitioner school, the distance between the school and the playground is only 500 ft. and not 500 metres. In my opinion, even the fact that the playground is 500 ft. away from the school cannot be a ground for rejecting temporary recognition for the reason already stated.

20. At the same time, just because defect no.5 cannot be sustained, this Court cannot come to the conclusion that the writ petition can be allowed. This is because, the petitioner school has failed to apply for temporary recognition within three months from the date of its opening as per Section 10(iii) of Chapter II of the Code which reads as under:

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"Recognition:

The Educational Agency of a private Matriculation School shall apply in the form prescribed in Annexure III for recognition of the school to the Director through the Inspector. The application shall be made within three months from the date of opening of the school. When a temporary recognition is accorded, application for continuance shall be made not later than three months prior to the date of expiry of the temporary recognition."

21. However, it is my considered view that the interest of 80 odd students studying in the petitioner school has to be kept in mind while deciding this case. In that view of the matter, taking into account overall aspects of the matter, this Court directs that:

a. the petitioner school has to rectify the defects pointed out in the impugned order, including making good the shortage of 30 cents of lands, within a period of three months from the date of receipt of a copy of this order and

b. thereafter, it has to apply to the third respondent seeking temporary recognition.

c. in the event of the petitioner school complying with the above directions, the respondents have to carry out an inspection of the petitioner school and thereafter, consider its application seeking temporary recognition, in accordance with law and on merits, bearing in mind, the interest of the student community and the public as well in that area, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of such application from the petitioner school. In the meanwhile, the impugned order passed by the second respondent is to be kept in abeyance.

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With the above directions, the writ petition is disposed of. No costs.

Cad

Sd/
Asst. Registrar (Records)

/true copy/

Sub Asst.Registrar

To

1 The Secretary to Government
School Education Department
Fort St. George, Secretariat, Chennai-600 009

2 The Director
Tamil Nadu Matriculation Schools
College Road, Chennai-600 006

3 The Inspector of Matriculation Schools
Coimbatore District

+1CC to GOVT. PLEADER SR No. 17558

+1CC to MR. R. SHIVA KUMAR, Advocate SR No. 16967

W.P. No.31169 of 2004

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